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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,339	07/08/2005	Joseph Peter Hubert Maria Mertens	APV31827	2176

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STEVENS DAVIS MILLER & MOSHER, LLP
1615 L STREET, NW
SUITE 850
WASHINGTON, DC 20036

EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/511,339

Applicant(s)MERTENS, JOSEPH PETER
HUBERT MARIA**Examiner**

Alexandra K. Pechhold

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/21/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: "the second connecting means" in line 12 lacks antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-6, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Englund (US 6,203,242 B1).**

Regarding claim 1, Englund discloses an apparatus comprising:

- a first barrier element (1) capable of bounding a carriageway, the first barrier element comprising:
- a guide element (1) extending along a longitudinal axis, the guide element comprising a foot part (3) located on an underside of the guide element transversely to the longitudinal axis of the guide element,
- wherein the foot part is provided with a base plate (6) on a first end of the guide element,

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- a second end of the guide element enclosing a first interior space (seen as the opposite end of barrier element 1 which has an interior space where another base plate 6 is inserted into),
- the base plate comprising parts of a first tenon and mortise connecting system (6, 8) as a first connecting means for connecting the first barrier element to a second barrier element, comprising parts of a tenon and mortise system as a second connecting means,
- the second connecting means comprising parts of a second tenon and mortise system (5, 8) located within a second interior space (seen as the space wherein bracket 5 is inserted into) of the second barrier element for interacting with the first connecting means (as shown in Fig. 2),
- wherein fixing means (5, 6) capable of accommodating a fixing element (8) for fixing the first barrier element relative to the carriageway is provided on the first end of the first barrier element (see Figs. 2, 3), and
- wherein the fixing means comprises a fixing plate (5, 6) provided with a feed-through holes (see seen as the hole where rod 8 passes through and the hole where rod 11 passes through), the fixing plate capable of extending within the second interior space of the second barrier element (see Figs. 2, 3).

Regarding claim 2, the fixing plate (6) is the base plate (6).

Regarding claim 3, the fixing means comprise a feed-through bush between the fixing plate and foot plate (see Figs. 2 and 3).

Regarding claim 4, wherein the fixing means are fitted near the guide element

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(see Figs. 1-5).

Regarding claim 5, the hole where rod (11) passes through is in the interior of the second barrier element (see Fig. 2) and the hole where rod (8) passes through is partially in the interior of the barrier element (since it is in the recess 4, 4' as shown in Fig. 2).

Regarding claim 6, the fixing plate (6) can be the same as the base plate (6).

Regarding claim 9, the foot part (3) has flanged bottom edges (see Fig. 4) provided below the feed-through holes of the fixing plate (see Figs. 1-4), and the fixing means includes one of a bolt, nail and rivet (see bolt 8 in Figs. 2-4) that can be arranged to pass through one of the feed-through holes and its associated feed-through bush to fix the first barrier element to the carriageway (as shown in Figs. 2-4).

Regarding claim 10, Englund discloses a barrier element capable of bounding a carriageway comprising:

- a guide element (1) extending along a longitudinal axis, the guide element includes a foot part (seen as base plate 3) located on an underside of the guide element transversely to the longitudinal axis of the guide element, the guide element having a left end and a right end along said longitudinal axis (seen Figs. 1 and 4 as the outer walls and, in the recess 4, as the interior walls),
- wherein the foot part is provided with a base plate (6) having a fixing portion that extends from one of the left end and right end of the guide element (as shown in Fig. 4 since plate 6 extends from the left or right end of the walls of the interior recess 4 of guide element 1), and the fixing portion has at least one feed-through

hole therein (as seen in Figs. 1 and 2) to permit a fixing element (8) to pass through the hole and secure the barrier element to the carriageway, and

- wherein the base plate further comprises a tenon and mortise connection system having one of a tenon and a mortise arranged in the fixing portion (seen as the tip of plate 6 that has a hole for rod 8) extending from one of the left end or right end of the guide element (as shown in Fig. 4 since plate 6 extends from the left or right end of the walls of the interior recess 4 of guide element 1), and the other of the tenon and mortise being arranged in the base plate at the other of the left end or right end of the guide element (see Figs. 2 and 3), so that the barrier element is connectable via the tenon and mortise arrangement to another barrier element (as shown in Fig. 2 and 3).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Englund (US 6,203,242 B1).** The fixing plate (6) of Englund can be the same as the base plate (6), though Englund fails to disclose six holes therein, two being near the foot, and four of the remaining six being fitted on the corner points of a rectangle. It

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would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the holes of Englund to comprise six holes, two being near the foot, and four arranged on corner points of a rectangle, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Response to Arguments

6. Applicant's arguments filed 12/21/05 have been fully considered but they are not persuasive. Applicant's arguments seem to extend beyond the scope of the claims, particularly when applicant points out how the barriers of Englund and the instant invention are different. As set forth in the claim rejections, the "brackets" of Englund are being viewed as the recited fixing plates, and simply because Englund terms them brackets does not mean they do not meet the claimed recitation. Applicant also argues that Englund discloses barrier elements that are connected together to form a hinge, whereas applicant discloses a fixing plate that affixes the barrier element relative to the carriageway. But the Examiner would like to point out that claim 1 merely recites a first barrier element that is *capable* of bounding a carriageway (an intended use recitation), since applicant is not claiming the combination of a barrier element and carriageway. And furthermore, the fixing means is "for fixing the first barrier element relative to the carriageway", again, an intended use claim. The same is true for new claim 10 ("A barrier element *for bounding a carriageway...*").

Conclusion

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (571) 272-6994. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (571) 272-6998. The fax phone number for this Group is (703) 872-9306.


Thomas B. Will
Supervisory Patent Examiner
Group 3600

AKP
1/26/06